

SUBCONTRACT

This contract agreement made and entered in this 5th day of March, 2002, by and between the Oglala Sioux Tribe Transportation Department, a legal political subdivision of the Oglala Sioux Tribe (hereinafter Transportation), P. O. Box 33, Pine Ridge, South Dakota, C&W Enterprises, Inc., P. O. Box 84826, Sioux Falls, SD 57118 (herein subcontractor).

For and in consideration of the mutual promises set fourth below, the parties agree to the following terms, and conditions.

1. **Contract Price and Bid Schedule.** Transportation agrees to subcontract with Subcontractor for the Pine Ridge Multi-Gravel Project for the Contract amount of \$ 2,079,377.20 in accordance with the attached billing schedule incorporated herein by reference. This schedule is based on unit pricing, and the parties acknowledge payment will vary depending on actual quantities installed. Unit prices provided in the bid schedule incorporated herein by reference include bond and Tribal TERO fee of 4 % of the Contract amount.
2. **Project Completion Date.** The Project shall be substantially complete by November 1, 2002 or the scheduled liquidation provisions will be in effect, absent extension. Substantial completion is the stage in the progress of the work when the work is sufficiently complete in accordance with the Contract documents so that the Project may be utilized for its intended use. Subcontractor agrees that for and in consideration of the unit price as set forth in the attached and incorporated herein by reference bid schedule, it shall faithfully carry out the duties to complete the Project in a timely manner.
3. **Delay and Extensions of Time.** If Subcontractor is delayed at any time in the commencement or progress of the work by an act or neglect of the Oglala Sioux Tribe or Transportation, or of an employee of either, or of a separate contractor employed by either, or by changes ordered in the work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, weather, or other causes beyond the Subcontractor's control, or by delay authorized by the Oglala Sioux Tribe or Transportation pending litigation, arbitration, or mediation, or by other causes which reasonably justify delay, then the Contract time shall be extended by a reasonable amount of time under the circumstances.
4. **Performance Payment Bond.** Subcontractor agrees that it will provide a performance payment bond for the Contract amount to the Oglala Sioux Tribe upon execution of this Contract.
5. **Contract Documents.** To the extent any such requirements are not contrary to the provisions of this Contract, Subcontractor agrees to proceed in accordance with the 1999 Oglala Sioux Tribal Employment Rights Ordinance, FHA Standard Specifications for the Construction of Roads and Bridges on Federal Highway

Projects, FP-96, the OST Transportation Code, including supplemental specifications contained in Section C, and special contract requirements in Section H of the Contract and plans.

6. **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed, and in no event later than twenty-one (21) days after first observance of the conditions. The parties shall promptly investigate such conditions and, if the conditions differ materially and cause an increase in the Subcontractor's cost or time required for performance of any portion of the work, there shall be an equitable adjustment through change order in the Contract sum or Contract time, or both. If the parties cannot agree on an adjustment in the Contract sum or Contract time, the adjustment shall be subject to further proceedings as set forth in Claim Resolution, Item 10.
7. **Written Change Order.** A change order is a written instrument signed by both the authorized representative of Transportation and the Subcontractor, stating their agreement upon all of the following:
 - a. A change in the work;
 - b. The amount of the adjustment, if any, in the Contract sum; and
 - c. The extent of the adjustment, if any, in the Contract time.
8. **Payment.** Transportation shall make bi-weekly progress payments. Payment shall be made on the 15th and last day of each month. Final payment, constituting the entire unpaid balance of the Contract sum, shall be made by Transportation to Subcontractor when the Contract has reached final completion.
9. **Limited waiver of Sovereign Immunity.** As a condition precedent to the parties being bound by the terms and conditions of this Contract, the Oglala Sioux Tribe of the Pine Ridge Reservation shall pass a resolution stating in material respects the following; (1) for the purpose of insuring the successful completion of the work and related matter, in order to provide the greatest social and economic benefits for the Oglala Sioux Tribe, the Oglala Sioux Tribe grants a limited waiver of its immunity for any and all disputes arising from this Contract, including the interpretation of the agreement and work completed or to be completed under the Contract; provided, however, that such waiver extends only to the Oglala Sioux Tribe and Transportation's specific obligations under the Contract; and further provided that such waiver shall be only to the extent necessary to permit enforcement by the Subcontractor. Nothing in the resolution is intended to waive nor shall it be construed to waive the sovereign immunity of the Oglala Sioux Tribe

with respect to any disputes or matters outside the terms of this Contract, nor as to any claims or demands by any person or entity not a signatory to the Contract; and (2) that an individual from the Oglala Sioux Tribe Transportation Department, with approval of the Oglala Sioux Tribe Executive Committee, shall be specifically designated and authorized to enter into change orders which increase or decrease the Contract sum and time.

10. **Claim Resolution.** The parties agree to bring any and all claims in the first instance to the Oglala Sioux Tribe Executive Committee for non-binding mediation, and thereafter to the South Dakota Federal District Court, and in the absence of Federal Court jurisdiction, the parties agree to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of this Contract. In the event there exists no Federal Court jurisdiction and the parties proceed to arbitration, the award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. In the event either party does not timely comply in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, said party waives its right to arbitration and judgment may be entered in the amount in dispute in accordance with applicable law in any court having jurisdiction thereof.
11. **Interest.** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate of ten percent (10%) per annum.
12. **Entirely of Contract.** Both parties agree that this written Contract constitutes the entire contract between the parties and there are no other contract or agreement, either written or oral, governing the parties' relationship.

C&W ENTERPRISES, INC.

BY: 

Its: President

OGLALA SIOUX TRIBE
TRANSPORTATION DEPARTMENT

By: 

Its: President, Oglala Sioux Tribe.

SECTION B – SUPPLIES AND PRICES/COSTS

ROADWAY SHAPING AND RESURFACING OF BIA ROUTES 17, 21, 1, 120, 16, 8, 24 AND 401 ON THE PINE RIDGE INDIAN RESERVATION, SOUTH DAKOTA

This section contains a bid schedule of pay items which identifies the subcontractor's costs for the subject project.

PLEASE USE BLACK INK OR TYPEWRITER

BID SCHEDULE

Pay Item No.	Pay Item Name	Unit	Est. Qty	Unit Bid Price	Amount Bid
15101	Mobilization	LS	1.000	86,134.19	86,134.19
15403	Contractor Testing	LS	1.000	35,000.00	35,000.00
15501	Construction Schedule	LS	1.000	3,072.88	3,072.88
15801	Watering for Dust Control	CY	23,924.000	3.79	90,671.96
21401	Ordinary Roadway Shaping	Mile	22.930	6,656.04	152,623.00
30802	Roadway Aggregate Method 2 (Haul & Lay Down)	Ton	208,841.840	7.79	1,626,877.93
63505	Barricade Type I	Each	24.000	306.13	7,347.12
63507	Construction Sign	Sq. Yard	2,668.000	12.25	32,683.00
63509	Flagger	Hour	2,280.000	16.50	37,620.00
63521	Warning Light Type A	Each	24.000	306.13	7,347.12
Total					2,079,377.20